THAM YEW HENG & ANOR.

v.

CHONG TOH CHENG

HIGH COURT, SINGAPORE
LP THEAN J
[SUIT NO. 2295 OF 1982]
19 DECEMBER 1984

TORT: *Road accident - Negligence - Whether there was contributory negligence - Standard of care expected of child - Brain damage - Prospects of future employment - Loss of future earnings.*

The 1st plaintiff, an infant, brought an action by his mother the 2nd plaintiff, for damages for personal injuries sustained by him as a result of a road traffic accident on West Coast Road, Singapore, on 4 August 1979. The 1st plaintiff sustained a fracture of the right maxilla and a laceration of the right cheek. He was unconscious for 3 days and was unable to speak for 1 week. There was no doubt that as a result of the accident, the 1st plaintiff had suffered brain damage.

Held:

[1] The defendant was negligent and was solely to blame for the accident. Although a speed of 35 m.p.h. is not a fast speed in normal circumstances but in view of the fact that the road was rather narrow and it was drizzling and the road was wet, and there were puddles of water at isolated spots, the defendant was driving too fast.

[2] There was no contributory negligence. The 1st plaintiff must have seen the defendant's car but a 9 year old boy could hardly be expected to exercise the same degree of care or caution as an adult. Although he estimated the distance of the car he could not have realised that as it was drizzling and the road was wet, it could take a longer time for a car to stop.

[3] Damages were awarded as follows:

(i) $3,500 for fracture of the maxilla and laceration.

(ii) $35,000 for permanent brain injury.

(iii) it is difficult to forecast what wages or salary he would earn in about 7 years' time as an unskilled worker or as a skilled worker or as a professional. In the circumstances and taking all factors into account. $48,000 ($200 per month x 20 years) was awarded for loss of future earnings.

(iv) $200 for agreed special damages.

Per curiam: "... in assessing ... general damages for the respective items I have of course taken into account the fact that these sums are awarded together and each is slightly lower than what I would otherwise assess in isolation."

[Judgment for plaintiffs.]

For the plaintiffs - Mohamed Abdullah
For the defendants - Chris Chng

JUDGMENT

LP Thean J:

The 1st plaintiff, an infant, is bringing this action by his mother, the 2nd plaintiff, for damages for personal injuries sustained by him as a result of a road traffic accident on West Coast Road, Singapore on 4 August 1979. At that time the plaintiffs were staying, and are still staying, at Apartment Block 512, West Coast Drive. On that day, at about 12 o'clock noon the 1st plaintiff, then 9 years old, was asked by the 2nd plaintiff to go to the shops on the opposite side of West Coast Road and to buy some things. Accordingly, he walked along to West Coast Road and at a point near the bus-stop he proceeded to cross the road and while doing so was knocked down by a motor-car driven by the defendant from the direction of Jurong towards Pasir Panjang Road. The stretch of road where the accident occurred is straight and is a dual carriage way but is rather narrow with a white line in the middle. At the time of the accident it was drizzling, and the road was wet.

The 1st plaintiff said that before he crossed the road he stopped at the side of the road and looked towards the right. He saw the defendant's car at some distance away - the distance he estimated was roughly about 35 feet - and then crossed the road presumably thinking that it was safe to do so. He was knocked down by the car near the center of the road. The defendant said he was driving the car at a speed of about 35 m.p.h. and following a truck which was about 9 car lengths ahead. He did not see the 1st plaintiff at the left side of the road and the first time he saw the 1st plaintiff was when the latter was knocked down by his car. After the collision the car stopped a few metres away, and realising that it might be obstructing traffic he drove his car forward to the left side of the road. There was a passenger in the car sitting next to the defendant. But his evidence does not throw any light on how the accident occurred. He also said that he did not see the 1st plaintiff before the accident and the first time he saw the 1st plaintiff was the time of impact.

I find the defendant's evidence that he did not see the 1st plaintiff until the time of the impact very surprising. The stretch of road is straight, and there was at that time nothing on the left side of the road which would obstruct his vision. According to him there was a truck ahead of him but it was 9 car lengths away. A distance of 9 car lengths is at least about 80 to 100 feet. With this distance separating the two cars the defendant ought to have seen the 1st plaintiff either at the side of the road or as he was about to cross the road, and if he had, he ought to have slowed down. The defendant said he was driving at a speed of about 35 m.p.h. That probably was not a fast speed in normal circumstances, though he exceeded the legal limit for traffic along the road. But the road is rather narrow and at that time it was drizzling and the road was wet; there were puddles of water at isolated spots. Traffic on both sides of the road was moderate and there was a truck in front - about 9 car lengths ahead. On the evidence I find that the defendant was negligent; he was driving his car too fast in the circumstances; he failed to keep a proper look out and failed to see the 1st Plaintiff at the side of the road of just as he was about to cross the road.

It was urged by Mr. Chng on behalf of the defendant that there was contributory negligence on the part of the 1st plaintiff; he should have seen the defendant's car and should not have crossed the road in the face of an oncoming car. I think that the 1st plaintiff must have seen the defendant's car, but a boy at the age of 9 years old could hardly be expected to judge accurately the speed and distance of an oncoming car. He cannot be expected to exercise the same degree of care or caution as an adult. I do not give much credence to his estimate of the distance of the car away from him when he first saw it before he crossed the

road. He estimated roughly a distance of 35 feet; obviously he has no idea of distance. Nor would he have realised that as it was drizzling and the road was wet it would take a longer time for a car to stop. I therefore find that the 1st plaintiff was not to blame for the accident.

I now turn to the question of damages. There is no doubt that the 1st plaintiff had suffered brain damage. After the accident he was admitted to Alexandra Hospital and later transferred to Tan Tock Seng Hospital. He was unconscious for 3 days, and was unable to speak for 1 week. He sustained a fracture of the right maxilla and a laceration of the right cheek. A right periorbital hematoma was noted as well as a swelling over the right maxillary region. He was discharged from hospital on 29 August 1979. He was examined by Dr. Michael H.L. Yap, a neurologist, in August 1981 and his opinion as given in his report dated 13 August 1981 is as follows:

> In view of the history and it was already 2 years after the accident, I concluded that it was possible that the patient had sustained a very severe post-concussional damage to the brain which may not have been detected on the computer x-ray of the brain but which could be concluded from his lower level of performance compared to previously.
>
> An EEG examination was performed, which showed definite asymmetry in the brain activity i.e. there was beta activity clearly seen over the right frontal region, and poorly seen over the left frontal region where intermittent beta activity occurred. If these EEG changes began since the time of the accident, then this would indicate that the patient still had quite severe brain dysfunction despite the fact that no gross structural changes could be demonstrated on the computer scan x-ray.

At that time he concluded as follows:

> It is difficult to prognosticate how well he would improve in the future as there is such marked individual variability in ability, intelligence and motivation, however, I can state firmly that there is no doubt that he has had severe brain dysfunction due to the head injury.

Dr. Yap also gave evidence and his conclusion was that after a lapse of about 5 years since the accident his improvement, if any, would not be significant.

The 1st plaintiff was also examined by Dr. Nei I-Ping, a consultant neurologist, who was nominated by the defendant's solicitors, and his neurological examination revealed defects in memory and in mental arithmatic. His conclusion is this:

> There is no doubt that he had deteriorated in his school performance. The severity of his head injury could be sufficient to explain this deterioration, as there was a significant period of post traumatic stupor of more than 24 hours consistent with severe brain concussion. The absence of abnormality on CT scan does not exclude severe concussion.
>
> Although there is still possibility for improvement this is likely to be minimal in view of the time lapse.

On the basis of the evidence and in view of the nature and extent of injuries suffered by the 1st plaintiff I award a sum of $38,500 for pain and suffering and loss of amenities, being $35,000 for the permanent brain injury and $3,500 for the fracture maxilla and laceration of the right cheek.

As for the claim for loss of future earnings, that is an area filled with uncertainties. Prior to the accident the 1st plaintiff was performing satisfactorily in school, but after his accident there was a marked regression in his performance. This is clearly evident from his school report: see Exhibit 'P1'. He is presently in extended Primary 8. But for the accident and the injuries suffered, he would, in normal circumstances, be in Secondary II. As there is hardly

any prospect of his improvement, it is extremely remote that the 1st plaintiff would be able to complete his secondary education. Tertiary education is completely ruled out in his case. Nor is it likely that he would be able to join any technical school or institution and be trained to acquire any technical skill. When he is 18 years old he will have to join national service, which will take up a period of 2½ to 3 years, and he will only be able to start working at the age of 21 years or thereabout. The question therefore is at that time what work he will do or will be capable of doing. In view of his limited ability and capability he would not be able to perform any skilled work or assume any responsible position. Dr. Yap said he could cope with simple work and I would expect that at that time it would not be difficult to obtain work of such nature. It is difficult at this moment to forecast what wages or salary he would earn as an unskilled worker at that time and also what he would earn if he were a skilled worker or a professional. On the basis of current trend and standards the disparity between the salary of a skilled worker or a professional and that of an unskilled worker is very substantial. It would however be unfair to take an amount representing such disparity and apply it to a multiplier of 18 to 20 years, which would then result in an astronomical sum. Obviously there are various contingencies which must be taken into account including the possibility that the 1st plaintiff, even if he had not suffered such injuries, might still not be able to make the grade of a skilled worker or a professional. In the circumstances I have to take a reasonably moderate figure and taking all the factors into account, I consider that a figure of $200 per month is the appropriate multiplicand and that 20 years is the appropriate multiplier and on the basis of these figures I arrive at a sum of $48,000.

For completeness, I should add that in assessing the said sums of $35,000, $3,500 and $48,000 as general damages for the respective items I have of course taken into account the fact that these sums are awarded together and each is slightly lower than what I would otherwise assess in isolation. There will be judgment for the 1st plaintiff for the sum of $86,500, being the total amount of general damages. As for special damages to the 2nd plaintiff, the amount has been agreed at $200 and accordingly, there will be judgment in the said sum for the 2nd plaintiff. The defendant will have to pay the costs of this action.

Also found at [1985] 1 CLJ 500